

Service Date: April 18, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of Valet Limousine LLC,) TRANSPORTATION DIVISION
Application to Amend an Existing Montana)
Intrastate Certificate of Public Convenience) Docket No. T-05.40.PCN
and Necessity, PSC No. 7172) Order No. 6724

PROPOSED ORDER

APPEARANCES

FOR THE APPLICANT:

Malin Johnson, Attorney at Law, Garlington, Lohn & Robinson, 199 West Pine Street,
Missoula, MT 59807-7909.

FOR THE PROTESTANT:

Chris Nygren, Attorney at Law, Milodragovich, Dale, Steinbrenner & Binney, 620 High
Park Way, Missoula, MT 59806-4947.

COMMISSION STAFF:

Robin A. McHugh, Staff Attorney, 1701 Prospect Ave., Helena, MT 59620.

BEFORE:

Doug Mood, Commissioner and Hearing Examiner.

BACKGROUND

1. On November 25, 2005 Valet Limousine, LLC, (Valet) filed an application to
amend its Montana Intrastate Certificate of Public Convenience and Necessity, PSC No. 7172,
by removing the seating limitations from the following:

- SUB C Class B - Passengers and personal baggage in limousine service originating from Missoula County Airport to all points and places in Ravalli County. Limitations: Transportation is limited to that provided by luxury vehicles in limousine service only with a maximum of eight (8) passengers per limousine. Transportation in school buses and motor coaches is prohibited; operations as a taxi or cab is prohibited. Solicitation of train crews for work-related transportation is prohibited. Transportation shall be provided to passengers by reservation only.
- SUB E Class B - Persons and baggage in limousine service between all points and places in Flathead, Lincoln, Missoula, Lake and Glacier Counties. Limitations: 1) No more than eight (8) passengers may be transported in one vehicle simultaneously for service originating or terminating in Missoula County. 2) The hiring of limousine service must be for the entire vehicle and solicitation of individual passengers to constitute a load is prohibited.
- SUB G Class B - Passengers in limousine service from points in Missoula County to all points and places in Ravalli County. Limitations: 1) No more than eight (8) passengers may be transported in one vehicle simultaneously. 2) Transportation which originates at the Missoula County Airport is prohibited.
- SUB H Class B - Passengers and personal baggage in limousine service: 1) Between all points and places in the following counties: Ravalli and Cascade; and 2) From all points and places in Ravalli and Cascade Counties to all points and places in Montana and return. Limitations: 1) No more than eight (8) passengers may be transported in one vehicle simultaneously for service originating or terminating in Ravalli County. 2) Operations as a taxi or cab is prohibited. 3) Transportation shall be provided to passengers only by advance reservation of at least two (2) hours. 4) Solicitation of train crews for work-related transportation is prohibited. 5) Service originating in Cascade County may be initiated only at the Great Falls International Airport for the purpose of picking up arriving airplane passengers. 6) Any return movements from points and places outside Ravalli and Cascade are limited to those passengers originating from these counties.

2. The Commission received a written protest from R&B Limousine Service, LLC, (R&B) whose Certificate of Public Convenience and Necessity, PSC No. 9445, Class B, reads as follows: "Passengers in limousine service (1) between all points and places in Missoula County and Ravalli County, Montana, and (2) between all points and places in Missoula County and Ravalli County to all points and places in Montana and return."

3. Following issuance of proper notice, a hearing was held before Commissioner Doug Mood on March 16, 2006 at the Missoula County Courthouse Annex, Room 201, 200 West Broadway, Missoula, Montana. At the close of hearing at least one party requested that a proposed order be issued. The parties did not file post-hearing briefs.

SUMMARY OF TESTIMONY

4. William Hennefer, the owner of Valet with his wife Debbie, appeared and testified in support of the application. Mr. Hennefer testified that there is a need in the Missoula area for limousines that carry more than eight (8) passengers. He stated Valet has received inquiries from parties of 15 to 20, and thinks present need would justify a limousine with a capacity of up to 24 passengers. He stated that Valet has the financial ability to invest in a larger limousine. He indicated that he suspects, but cannot document, that Valet has lost business because of its passenger limitation. He said Valet has referred requests for a larger vehicle to the Protestant R&B, but does not know whether R&B was contacted or was able to provide the service. Finally, Mr. Hennefer opined that Missoula and Western Montana lag in the limousine business by not having a "wow" vehicle available. The implication was that Valet would like to offer such a vehicle. Mr. Hennefer was aware of the 8 person limitation in the Valet Certificate at the time he purchased it.

5. Kyle Stensrud of Florence, Montana appeared and testified in support of the application. Mr. Stensrud explained that he helps to organize an annual cowboy ball as a fundraiser for the University of Montana Rodeo Team, an event that has grown to include more than 700 persons, normally seated at tables of 10-12. He testified that generally limousines are in great demand the evening of the ball and that Valet's vehicles are not able to serve the larger groups. He said he found Valet in the Yellow Pages, but not R&B. He said he thinks there is a

need for vehicles that can carry more than 8 passengers. Mr. Stensrud acknowledged that he does not rent limousines, but makes referrals in response to inquiries; he conceded that there was an R&B ad in the Yellow Pages at the time of the last cowboy ball, October of 2005, and he did not have knowledge or experience contacting R&B and finding R&B unable to provide service.

6. Gail Van Ommen, a resident of the Missoula area appeared and testified in support of the application. Ms. Van Ommen described her experience with a medical benefit auction where a prize was the use of a Valet limousine. Taking advantage of the prize was a disappointment because the party of 16 could not fit in the vehicle. Ms. Van Ommen has not inquired about using an R&B limousine for parties of more than 8, but regardless stated she thinks there is a need for a larger limousine in the Missoula area. The instance involving the medical benefit prize was the only situation where Ms. Van Ommen could testify that she was unable to arrange for satisfactory limousine service.

7. Owen Robbins of Stevensville appeared and testified in support of the application. Mr. Robbins is the marketing director for Farmers State Bank in Victor and occasionally arranges special events for "legacy club" members - persons with bank deposits of greater than \$15,000. These events include transportation and Mr. Robbins stated there have been times when the Legacy Club could have used a limousine with a capacity greater than 8 persons. He conceded that in his role as marketing director he has never contacted R&B and been told service is not available, and personally he has never had occasion to use a limousine.

8. Leilani Booi, a wedding and event planner in Missoula, appeared and testified in support of the application. Ms. Booi books limousines for others. She is familiar with Valet, but not with R&B. She said that she sometimes is asked for a limousine for a party of greater than 8, and would like to have a larger vehicle available, including a vehicle with a capacity greater than 14. She has not called R&B and been told service is not available.

9. Laura Martin of Evaro, a project manager for AT&T, appeared and testified in support of the application. Ms. Martin has used Valet on one occasion and was pleased with the service. She foresees the need to use large limousines in the future and would like to use Valet again. She conceded that it does not appear that R&B was busy on the day she used Valet, and acknowledged it would be possible to use R&B in the future.

10. Richard Hader, a Highway Patrol officer who works with the Montana Hope Project to grant wishes to sick children, appeared and testified in support of the application. He

explained that the Hope Project has used Valet, but that the eight person limitation can be a problem because families can be larger than that and there can also be medical equipment to carry. Mr. Hader indicated it had not occurred to him to call R&B, and that a 14 passenger vehicle could at times be better suited to his needs.

11. Ben Stonebraker, a ski instructor from Missoula, appeared and testified in support of the application. He described an occasion when he and a group of friends used Valet and were required to take two cars because there were 14 persons in the group. He characterized being forced to use two vehicles as less than optimum. He conceded that he did not contact R&B and that it appeared R&B was not busy on the day he used Valet. He said he prefers a larger SUV limousine to a sedan because of the "wow" factor.

12. Beth Shipley of Missoula, director of special events for the Rocky Mountain Elk Foundation, appeared and testified in support of the application. She said she hires limousines for Foundation events and has had good service from Valet. She claimed it would be helpful to have larger vehicles to accommodate larger parties, and she expressed a preference for a Missoula service rather than a service out of the Bitterroot Valley. She acknowledged that she had not been aware of R&B and had not investigated a limousine service other than Valet.

13. Kenneth Hiatt, who along with his wife bought R&B approximately one year ago, appeared and testified in opposition to the application. He said R&B owns three vehicles: a six passenger, a nine passenger and a fourteen passenger limousine. R&B provides regular limousine service to Ravalli and Missoula counties, and has done roughly \$27,000 in gross sales during the year Mr. Hiatt and his wife have owned it. He emphasized that 90% of R&B business is for the big cars and opined that business would suffer if there were competition for the 9 person and 14 person vehicles. The R&B vehicles are located in Corvallis, but Mr. Hiatt described R&B as in business for all of Missoula and Ravalli Counties, not just the Bitterroot. He stated that he is aware of only one occasion when R&B has had a request for a vehicle with a capacity greater than 14. He claimed that it was a mistake that R&B was not listed in the 2006 Qwest DEX Yellow Pages, noted that R&B was listed in the 2006 White Pages, and indicated that listing in the Blackfoot Directory was discontinued because of problems listing the correct phone number.

14. Andrew Larsen, the primary driver for R&B, appeared and testified in opposition to the application. Mr. Larsen agreed that R&B would be hurt significantly by a grant of the

application because R&B does 90% of its business with the 14 passenger car. He has observed little demand for a vehicle with a capacity greater than 14, and personally has not had requests for such a vehicle.

15. Elizabeth Hiatt, co-owner of R&B, appeared and testified in opposition to the application. Mrs. Hiatt indicated that R&B planned to do more advertising but did not because of Mr. Hiatt's poor health. She opined that losing business for the 9 and 14 passenger cars would hurt R&B.

16. Mark Fournier, former owner of R&B, appeared and testified in opposition to the application. He said that most of R&B's business is with the larger cars and that if Valet had received the authority applied for in this docket when he owned R&B, he would have had to go out of business.

EXHIBITS AND NOTICE

The following exhibits were admitted at hearing:

Valet Exhibit A - A letter from Farmers State Bank regarding the ability of Mr. Hennefer to finance an expansion of Valet;

Valet Exhibit B - A copy of a page from the 2006 Qwest DEX Directory displaying an ad for Valet and containing no listing for R&B;

Valet Exhibit C - A copy of a page from the November 2005 Blackfoot Directory displaying a listing for Valet, but not for R&B;

R&B Exhibit 1 - A copy of the ads for Valet and R&B displayed in the 2005 Qwest DEX Directory;

R&B Exhibit 2 - A copy of the Qwest DEX Directory page including the display ads submitted as R&B Exhibit 1;

R&B Exhibit 4 - A copy of a desk calendar showing R&B bookings from February 2005 through February 2006.

R&B Exhibit 5 - A copy of a R&B "Service Sales Agreement Draft" between Mark Fournier, past owner of R&B, and Kelly Hiatt, present owner of R&B;

R&B Exhibit 6 - A copy of a document showing the number of rentals by month (February 27, 2005 to December 27, 2005) for the R&B 9 and 14 passenger limousines, and total revenues from those rentals;

R&B Exhibit 7 - An R&B business card;

R&B Exhibit 8 - Copies of reservation contracts for R&B for the period February 2005 to December 2005.

R&B also submitted as exhibits the Valet application in this docket; PSC Order No. 6537, Docket No. T-03.3. PCN; and an "Agreement between Parties" in Docket T-03.39. PCN, which resulted in the withdrawal of a protest in that docket. The Commission takes administrative notice of these documents, which are contained in the official Commission files; it was not necessary to offer or admit them into evidence.

DISCUSSION, ANALYSIS AND FINDINGS

17. In considering applications for operating authority, the Commission is governed by the provisions of 69-12-323, MCA. Paragraph (2)(a) of that section provides as follows:

If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefore shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous through 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

18. Applying this language to the facts presented by any application for transportation authority, the Commission has traditionally undertaken the following analysis: First, it asks whether the applicant has demonstrated that there is a public need for the proposed service. If the applicant has not demonstrated public need then the application is denied and there is no further inquiry. Second, if the applicant has demonstrated a public need for the proposed service, then the Commission asks whether existing carriers can and will meet that need. If demonstrated public need can be met as

well by existing carriers as by an applicant, then, as a general rule, an application for additional authority will be denied. Third, once it is clear that there is public need that cannot be met as well by existing carriers; the Commission asks whether a grant of additional authority will harm the operations of existing carriers contrary to the public interest. If the answer is yes, then the application for new authority will be denied. If the answer is no, then the application will be granted, assuming the Commission determines the applicant fit to provide the proposed service. With regard to the third question asked as part of the analysis the Commission notes that it recently modified the application of this element, indicating "that it does not consider limousine service an 'essential and indispensable' service, and will not apply this standard as rigorously as if it were dealing with an essential service." Application of Miller, Docket No. T-03.47. PCN, Order No. 6543a, para. 21 (April 16, 2004).

19. The traditional analysis described above has perhaps been stated most concisely in the case of Pan American Bus Lines Operation, 1 M.C.C. 190, 203 (1936):

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

20. The first question to be addressed is whether Valet has demonstrated a public need for removing the seating limitations in its Certificate. The Commission determines that it has. Witnesses Stensrud, Van Ommen, Robbins, Booi, Hader, Stonebraker and Shipley all testified, either personally or in their capacity of arranging transportation for others, that there is a need for limousines that can carry more than 8 persons.

21. The second question is whether existing carriers can and will meet the public need demonstrated. On this record there is no evidence that R&B cannot meet the need. No Valet witness testified that, on an occasion when a limousine with a capacity of greater than 8 was desired, R&B was contacted and was unable or unwilling to provide the service. On this application the absence of such testimony is dispositive. R&B has a 9 passenger and a 14 passenger vehicle; both, obviously, with a capacity greater than 8 passengers. In the absence of

contrary evidence, and given that R&B's vehicles are often idle, the Commission has no basis to conclude that R&B could not or would not meet the need demonstrated.

22. R&B did not place an ad in the 2006 Qwest DEX. Failure to do so has a serious impact on R&B's visibility, and in the future could be relevant to the question of R&B's willingness to serve. However, for the time period relevant to this proceeding R&B was listed in the Qwest DEX, with a display ad as large as Valet's, clearly indicating the availability of the 9 and 14 passenger vehicles.

23. Also, there was some discussion on this record of the fact that R&B is a business located in the Bitterroot Valley, with its cars housed in Corvallis, a community approximately 43 miles south of Missoula. The Commission is invited to conclude from R&B's location that R&B cannot meet a need for limousine service in Missoula. Location can be relevant (see Application of Miller, supra, p. 8), but in the absence of any evidence that R&B's location makes it impossible or very difficult for R&B to comparably serve a need for limousine service in Missoula, the Commission will not assume in this case that it cannot meet the need. No Valet witness investigated R&B and declined to use R&B because of factors relevant to location, such as price or availability of service.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.

2. The Commission has provided adequate notice and opportunity to be heard to all interested persons in this matter.

3. The applicant has not demonstrated a need that cannot be met as well by an existing carrier.

ORDER

Now, therefore, it is ordered that the application in this docket is denied.

Doug Mood
Commissioner and Hearing Examiner

ATTEST:

Connie Jones
Commission Secretary

NOTE: Parties are advised that this is a Proposed Order only. If exceptions are filed this order may be modified. If exceptions are not filed, this proposed order may be adopted as the Commission's final order. Each party has the opportunity to file exceptions, present briefs, and have oral argument before the PSC prior to Final Order. *See §2-4-621, MCA.* Exceptions and briefs must be filed and served on all parties within 20 days of the service date of this Proposed Order. Briefs opposing exceptions must be filed within 10 days thereafter. Requests for oral argument may be made in the briefs, or separately, but must be made no later than the due date for the final briefs.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Proposed Order, No. 6724, issued in Docket T-05.40.PCN in the matter of Valet Limousine LLC, Missoula, Montana has today been sent to all parties listed.

MAILING DATE: April 18, 2006

FOR THE COMMISSION

FIRST CLASS MAIL

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